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Tenant Lease Considerations for Cannabis Retail Stores

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The Ontario Government has moved to the next phase of its plan to license cannabis retail stores within the province with the most recent lottery adding 50 new stores to open this fall. If you are a lottery winner in the process of opening a new cannabis retail store, leases are a critical component to ensure success. Below are a list of considerations to keep in mind:

- Ensure that the Use provision is as broad as possible so as to permit the tenant to sell cannabis and cannabis related products (including edibles and consumables) and expand on services provided in the leased premises (such as the sale of coffee or food products) as are permitted to be sold from time to time under the governing legislation. Today there are stringent limitations, but over the term of the lease those limitations may become less stringent and the tenant may be able to sell additional products such as edibles, oils and offer additional services
- Tenant should only be required to operate its business from the leased premises during those hours permitted under the applicable legislation governing cannabis retail operations.
- Landlord should acknowledge that it will have no right to distraint or otherwise seize or sell any regulated or controlled substances within the leased premises including, without limitation, cannabis.
- Tenant should request that the landlord waive all rights and interest it may have in the tenants personal property. In the alternative the landlord should agree to postpone or subordinate any interest it has in the tenant's property in favor of any lender of the tenant. If the tenant is financing its operations, the lender will likely require first security in all of the tenant's personal property and will want a waiver from the landlord.

- In exercising any right of entry into the leased premises the Landlord must enter in the accompaniment of a representative of the tenant (except in a bona fide emergency or where tenant fails to make a representative available). Regardless, any entry must be made in compliance with all laws, including cannabis laws.
- Tenant should request the exclusive right to operate a Cannabis retail store from within the development. No other Tenant should be permitted to sell Cannabis or Cannabis products. Consider providing examples of products to be restricted including edibles and consumables.
- Try and have the landlord warrant and represent that the leased premises are zoned to permit a retail cannabis store and that there are no restrictions in any agreements affecting the landlord or the development that would restrict or prohibit the tenant from operating a retail cannabis store at the development. Tenant's counsel may consider searching title to the property to ensure there are no agreements on title containing any such restrictions.
- The landlord should covenant to abide by all laws including cannabis laws.
- The lease should provide for the tenant's ability to assign or sublet the leased premises for other uses as if the retail sale of cannabis is not profitable at the location, or becomes prohibited, the tenant will need the ability to assign the lease or sublet the leased premises to another party for another use.
- There should be no right for the landlord to elect to terminate the lease in the event of a request to assign the lease or sublet the premises.
- Be wary of clauses in the lease that require a tenant to pay any proceeds from an assignment of the lease or sublease to the landlord which were attributable to the lease or the location. If the tenant sells its business, it should be certain to state that no value is being attributable to the lease or the location.
- Storage and receiving areas must be exclusive to the tenant (this can be accomplished by managing hours of access and providing security guard to enforce it).
- The Tenant should request the right to terminate the lease if at any time (i) it is not able to obtain all required permits, licenses and approvals from all governing authorities (including the Alcohol and Gaming Commission of Ontario (the "AGCO")), (ii) any permit or license required to operate a retail cannabis store from the leased premises is revoked or cancelled for any reason outside of the control of the tenant, or (iii) the laws are changed such that the sale of cannabis and/or cannabis products are prohibited or significantly restricted such that tenant is not able to reasonably operate the business of a retail cannabis store from the leased premises.
- If the lease is more than 3-5 years, consider requesting an early right of termination in case the business does not work. Typically a landlord would request several months rent as an early termination fee. Another way of tackling the problem is to negotiate the right to terminate the lease after the first "x" years if gross sales from the leased premises in the last year do not exceed "X" dollars.

Our Cannabis Law Group has extensive experience in helping lottery winners to open their cannabis retail stores in a timely manner that passes the strict requirements set out in the legislation. For more information, please contact a member of our Cannabis Law Group.

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